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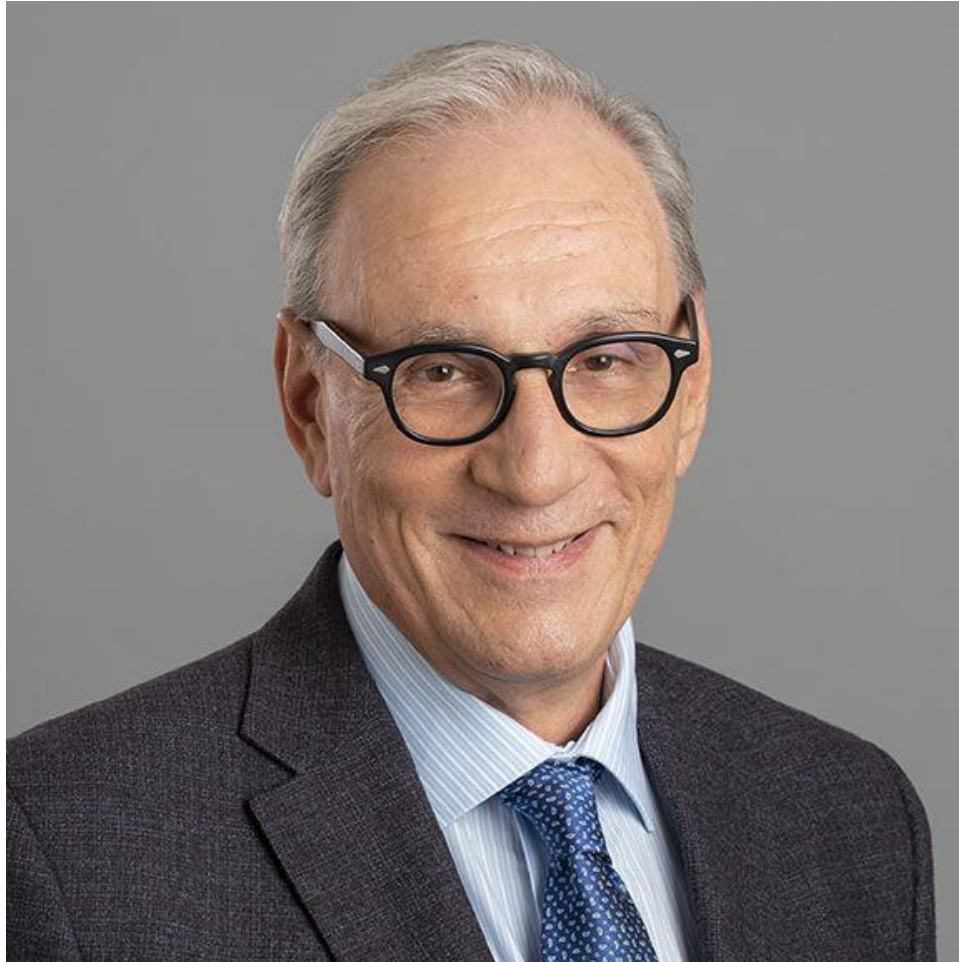
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## **Professor Michel Rosenfeld Writes about Trump and American Politics in Esprit Magazine**



### **DONALD TRUMP'S ASSAULT ON THE US CONSTITUTION AND AMERICAN POLITICS: AN ABERATION OR A LASTING QUAGMIRE?**

From a bird's eye perspective, the Trump phenomenon in the US seems to bear strong resemblance to the wave of right-wing populism that has spread through Europe in recent times. Trump was an early supporter of Brexit. He is an admirer of Boris Johnson and Viktor Orban, and he has resorted to rhetoric reminiscent of Le Pen and Salvini. As all populists on the right, Trump has cast a part of the American people as the whole while lumping the rest of his country's citizenry together with immigrants and foreigners as the enemy. Some of this sounds very familiar: pit the common man against the experts and the elite and throw in a hefty

dose of misogyny for good measure; launch a political campaign for the presidency by proclaiming that Mexicans are criminals bent on illegally crossing into the US; and hasten to issue a presidential decree ordering a “Muslim ban”. Unlike Orban, Trump has lacked the power to adopt a new constitution suited to his autocratic ambitions, but this has not prevented him from blurting that his constitutional powers are unlimited, and this in a country where every school child learns that the paramount objective of the 1787 US Constitution was to insure that no one in the newly independent nation should come anywhere near the above the law status of the British King against whom the American colonies had successfully rebelled. Also, in contrast to Orban, Trump has not thus far had the opportunity to nationalize or to buy out his country’s press. Nevertheless, Trump has systematically characterized factual press reporting that he finds unflattering as “fake news”, and the press generally as the “enemy of the people”. Moreover, he has indulged in verbal intimidation of individual journalists covering his political rallies while inflaming the passions of his rabid supporters.

In the wake of globalization, the US has experienced similar increases in disparities in wealth—as a matter of fact, the US has generated the greatest such disparities among the Western industrialized nations—dislocations, resentments, and a sense of loss of self-governing capacity as have its counterparts within the EU. Significantly, however, there appear to be two important distinctions between the US and European countries, and they both relate to America’s, famed to some yet infamous to others, “exceptionalism”. The first of these concerns the US’s self-perception as a super-power that is in no way subordinate to any global or transnational governance or authority as opposed to EU member-states that are seen as dependent and sometimes subordinate to Brussels or transnational courts in Luxembourg and Strasbourg. Within this perspective, Brexit is a welcome emancipation allowing the UK to reintegrate into what many Americans consider the superior legal and political order invented and nurtured by English speaking peoples. Related to this, the second of these distinctions is based on the very American notion that the US has had a unique constitutional history and destiny unparalleled elsewhere. Before the fall of the Soviet Union, most Americans tended to consider their constitution simply superior to all others. Since then, there is increasing acceptance that many other countries may have comparably suitable constitutions, but there remains a steadfast belief that because of its unbroken longevity, the 1787 US Constitution, which is still in force today, makes the US the most solidly entrenched and potentially ever enduring constitutional democracy in the world.

At first sight, the US’s political and constitutional exceptionalism make it ill-suited for Trumpism. Politically, the US has played a leading role in globalization, molding and bending the transnational legal and political playing field, assuming

the role of international policeman, and exporting its free-market ideology and popular culture throughout the world. It is true that the US has signed on to global and transnational legal and regulatory regimes, but it remains dominant in them as evinced by its veto power in the UN Security Council, its ability to shape the World Trade Organization into a worldwide free market guarantor, and its traditional leading presence in NATO. Moreover, whereas the US has long proclaimed itself a human rights beacon and has pressed other nations it has found wanting on this score, it has also systematically eluded accountability when pressed and evaded transnational judicial reprobation by refusing to be brought before the International Criminal Court or the Inter-American Court of Human Rights. It is hardly an exaggeration to proclaim that against European inward-looking nationalism and bemoaning of loss of national sovereignty under the yoke of systemic EU intrusion, American nationalism not only has been for the most part exuberantly optimistic but also thrust outward as many Americans have been long convinced that export of the virtues and values ingrained in their national identity would make all the other nations in the world better off. Finally, whereas much of recent European nationalism from Orban to the proponents of Brexit is strongly anti-immigrant, America has traditionally promoted itself as a country of immigration, albeit that its actual record on the subject has been far from consistent or stellar.

Constitutionally, on the other hand, the sense of continuity and of adherence to the rule of law in the US has persisted through a civil war, turmoil over racial desegregation, and great increases in the powers of the presidency going back to the days of Franklin Roosevelt who led his reluctant citizenry into the Second World War. Beneath the surface, the American constitutional odyssey was far from smooth or harmonious, starting with a nod to slavery and requiring a civil war, that some have labelled as a second revolution, to abolish it and to adopt for the first-time equality rights that the French 1789 Declaration had enshrined almost a century earlier. But in spite of all this, in contrast to France's five republics and many constitutions interrupted by returns to monarchy and by the Napoleonic empires, the US has maintained constitutional democracy throughout. And, even though the modern American presidency has been characterized as being "imperial", US presidents, including Truman in the midst of the Korean war and Nixon during the Watergate scandal, have consistently backed down and reversed course when confronted with an adverse US Supreme Court decision.

How can Trump's ascent to the US presidency be accounted for under these circumstances? And, furthermore, how can his sustained popularity as president with around 45% of the American people be explained in view of his vulgar demeanor; his divisive, scandalous, often indisputably incompetent, openly nepotistic and corrupt approach to governance; and his blatantly contemptuous

disregard of the rule of law and of constitutional “checks and balances”? Indeed, in 2017 Trump asserted that there were some good people among neo-Nazis with automatic rifles marching menacingly displaying the swastika and chanting anti-Semitic slogans; and in recent days at the height of a pandemic that is killing thousands of Americans every day, Trump expressed support to similarly armed protesters that had stormed into the Michigan state legislature debating extension of a lockdown to reduce deaths from the coronavirus. And this, even though the menacing and largely unmasked men involved were in defiance of federal guidelines that Trump himself had publicly insisted on. Trump has called judges that rendered decisions against him personally or against some of his policies “so called judges”; systematically resisted what had been, under past presidents, routine oversight of executive policies and programs by the US Congress; and accused the Democratic Party of plotting, or at least rooting, for the highest possible number of American deaths from the current pandemic because, as far as he is concerned, this they believe to be their only hope to defeat him in the November 2020 election.

Upon further reflection, in spite of the widespread puzzlement that it has fostered, the rise of Trumpism in the US should not be considered aberrant based on a consideration of the confluence of three sets of factors. The first of these shares much in common with the emergence of rightwing xenophobic populism in Europe and elsewhere. The second and third of these, on the other hand, are distinctly American. One of them originates in a fault line dating all the way back to the country’s Declaration of Independence and its 1787 Constitution. The other one figures as the byproduct of a more recent political trend towards tribal partisan confrontation among the country’s two major political parties. That confrontation first surfaced during the Clinton presidency and has evolved into an ever more acute dysfunction veering at times at the edge of paralysis regarding the key governmental operations entrusted to the federal government.

Globalization and even the evolution of the internal economy within the US did lead to dislocations and to exacerbation of wealth disparities comparable to those experienced in other advanced economies notwithstanding America’s dominance in the worldwide market. Thus, for instance, manufacturing jobs were widely exported to countries with lower labor costs; many other jobs were lost to automation; certain industries like coal mining were heading to a free fall as the country turned to cleaner and more efficient sources of energy; and already weakened labor unions were becoming ever more marginal. Moreover, both Republican and Democratic administrations had uniformly backed international free trade and had entered into multiple regional and transnational free trade agreements. Interestingly, although now supported by over 90% of those who identify as Republicans, Trump entered the contest for that party’s 2016

presidential nomination by embracing a populist, protectionist, and isolationist position that was vigorously decried by the Republican establishment. At that time, and ever since, Trump's most ardent supporters and the backbone of his "base" have been white men without university education. Embracing the slogan "America First" --adopted in the early 1940's by an organized movement that resorted to pro-fascist and to anti-Semitic rhetoric in its opposition to Roosevelt taking the US into World War Two—Trump set out to campaign against all those he cast as internal and external enemies of the hard working Americans, many of whom experiencing underemployment or lower wage more menial employment, in order to return to an idealized, distorted and blurry version of happier times possibly going as far back as the 1950's.

The deeply ingrained American fault line that Trump exploited on the road to his presidency is the one on race. This fault line already became manifest in the contrast between the 1776 US Declaration of Independence with its famous dictum that "All men are created equal" and the 1787 US Constitution which made prohibition against interfering with the slave trade its only unamendable provision meant to last for a full generation. In addition, to avoid a stalemate between northern and southern states, the Constitution stipulated that slaves should count as 3/5 of a person in determining the size of the delegation of elected representatives that each slave state would be entitled to send to the US House of Representatives. It took a bloody civil war before constitutional amendments prohibited slavery in 1865 and instituted equality rights in 1868.

The struggle between those who have favored and fought for racial equality and those who have engaged in racist or racially divisive policies has endured throughout the history of the US. Moreover, whereas African Americans have been by far the most mistreated and victimized group, other groups, such Chinese immigrants in the nineteenth century and Americans of Japanese origin during World War Two, have also been subjected to shockingly demeaning racist policies. Although undeniable progress toward racial equality has been made since the 1950's when the US Supreme Court held that state mandated racial segregation was unconstitutional, the quest to end racism has never approached anything nearing full success or proceeded without periodic setbacks. For those committed to racial equality, the election of Barak Obama to the presidency in 2008 represented a huge turning point that led many to proclaim vastly overoptimistically that the US was entering a new era of "post-racial" politics.

Trump, who at the time was a private businessman with a national profile as a television show personality, became the poster boy of those bent on targeting and discrediting Obama in the pursuit of racially divisive aims. For years, starting in

2011, Trump aggressively publicized the “birther” lie which accused Obama, who was born in the state of Hawaii as the son of a Kenyan father and a US Midwestern mother, of being actually born outside the US. As the Constitution prescribes that only US born citizens can become US president, the “birther” movement led by Trump amounted to a constant attack against Obama as being an illegitimate usurper of the highest office in the land. Taken together with the false charge embraced by Trump that Obama was a Muslim, the “birther” lie became a focal point for the launch of Trump’s quest for the presidency on a fundamentally racially divisive and racially tinged anti-immigration (anti-Mexican but pro-Norwegian) agenda. Also, once victorious Trump continued to pursue these racially divisive objectives as evinced by his already alluded to “Muslim ban”; his opposition to immigration from countries with black majorities, which he called “shit holes”; and his constant winking at, and equivocating about, white supremacists who have repeatedly embraced him and his policies. In short, Trump has led the countercharge against what many saw as the culminating achievement of the proponents of racial equality.

The second major domestic contributor to Trump’s success is the progressive fall of American partisan politics into tribal warfare and near total political paralysis. Democratic politics within a working constitutional framework work best when opposing parties maintain an adversarial stance towards one another but remain within the rules of the game and regard those out of power as the loyal opposition. On the other hand, when the opposing party is regarded as the enemy and as unpatriotic as Trump has constantly characterized the Democratic party and public officials affiliated with it—a tendency that has been typical of contemporary populists on the right—laws, rights, and the constitution become but manipulable tools in the quest to impose one political faction’s will at all cost and to drown out all opposing or competing agendas. Unlike the political parties in a multi-party parliamentary democracy, the two dominant US parties have been amalgams of often complex sets of odd bedfellows. For example, in the 1960’s and 1970’s, the Republican Party housed ultra-conservatives such as Barry Goldwater together with moderates and social progressives such as Nelson Rockefeller. The Democratic Party, for its part, harbored progressive civil rights champions such as Robert Kennedy alongside with Robert Byrd, a former Ku Klux Klan member who sought to block civil rights legislation in the US Senate. Moreover, in spite of intense differences on certain issues such as racial desegregation, the two parties largely functioned as loyal adversaries and often reached working consensus in several areas, including foreign policy. Although there were notorious challenges, such as the increasing discord over the Vietnam War and race riots in the late 1960’s, it would not be until 1994 when Clinton was president and the Republicans won both Houses of the US Congress that the kernels of the politics of mutual destruction saw the light of day. This new animosity led to Clinton’s impeachment

for lying to authorities about a sexual liaison with a young White House assistant and was exacerbated in the immediate aftermath of the highly contested result in the 2000 presidential election. The Democratic candidate Gore won the popular vote but it took the US Supreme Court in a 5-4 vote (with all the five justices in the majority nominated by Republican presidents) to decide a bitterly fought Electoral College dispute, thus de facto handing the presidency to the Republican candidate, Bush.

Although Obama won both the popular and the Electoral College vote twice, the politics of mutual destruction became pervasive in the course of his administration. In the first two years of his presidency, with Democratic majorities in both houses of Congress, Obama was able to get through his ambitious health care reform project. After the Republicans retook the US Congress in 2010, however, the Senate Majority Leader announced that his overriding goal was to assure that Obama would not be reelected—which he was in 2012. This new animosity would virtually paralyze the US legislative branch as the Republicans would block any Obama backed initiative but lacked the 2/3d majority in both houses to overcome a presidential veto in case they sought to advance their own legislative projects.

Trump rode the path to his improbable victory in the 2016 presidential election by exploiting and fueling resentment, appealing to the racial divide, and pounding on an anti-immigration refrain always tinged with racially charged rhetoric. Trump portrayed himself as an anti-establishment populist who championed the neglected and left behind non-elite white man who had purportedly been the backbone of America's now vanished glorious past. And in so doing, Trump reinvigorated and magnified an American long standing racially divisive leitmotiv consisting in redirecting what would ordinarily fuel class struggle into racial resentment. This is usually done by blaming affirmative action for, and immigration of, non-whites for the woes of the displaced or disadvantaged white workingman. In addition, Trump took advantage of more recent racially charged fears prompted by projections that the majority of the US population will be non-white by 2050.

Trump's anti-establishment image was boosted by his defeating all the many competing candidates for the Republican nomination, most of whom represented the vanguard of seasoned Republican politicians, including Jeb Bush, the son and brother of past presidents. Moreover, this was further exacerbated by his unorthodox and in many ways offensive presidential campaign in the course of which he called for the imprisonment of his opponent Hillary Clinton egging his crowds with chants of "lock her up", and openly calling upon Russia to turn hacked Hillary emails to the US press.

Trump's appeal to those who felt disgruntled and dispossessed was certainly not nearly sufficient for him to win the presidency. Although Trump managed to



obtain the support of some of the disappointed supporters of Bernie Sanders, the populist on the left who had lost in the battle for the Democratic nomination, there was a widespread belief that he would lose the election because of his lack of appeal among establishment Republicans, and especially among Republican women. That was a miscalculation, however, because Trump cleverly supplemented his anti-establishment message with certain promised policies dear to Republican hearts, such as the nomination of very conservative federal judges and a systematic project of deregulation in areas such as the environment and safety which are favored by pro-business interests.

Trump's presidency has been a great success with Republicans who now almost unanimously support him. He delivered on huge tax reductions benefitting mainly the richest 1%; an impressive number of ultra-conservative judicial appointments; massive deregulation and other pro-business policies. Besides vigorously and ubiquitously taking their side in the cultural wars, Trump has done little to materially advance the alienated left behind cohort that forms his "base". From a constitutional standpoint, the most significant development has been the collapse of any institutional resistance—and what is more the near complete complicity—by Republicans in Congress which has undermined oversight and thoroughly undermined the impeachment proceedings against Trump. On their face, the impeachment charges brought by the Democratic House of Representatives were more serious than those involved in the cases of Nixon. Trump was accused of pressuring the president of Ukraine to take action that would falsely discredit Trump's rival for the 2020 election and of illegally withholding much needed US military aid meant to help Ukraine against Russian aggression to the detriment of US national security. After being exonerated by the Republican controlled Senate, Trump embarked on a vendetta against government employed personnel who was summoned to give testimony during the impeachment inquiry.

Many feel that Trump's reelection will deal a grave blow to American constitutional government as he would get an additional four years to act as if above the law, to completely politicize the Department of Justice, and to spread corruption by boosting his personal business interests and those of his close supporters among the business class elite. At the beginning of 2020, as Bernie Sanders was the leading candidate in the contest for the Democratic president, many feared an exacerbation of the politics with a populist on the right slugging out with a populist on the left with no room in between. Since the onset of the pandemic, however, given Trump's glaring lack of leadership and centrist Biden emerging as the Democratic candidate, some have become more hopeful of achieving a return to greater unity and to a restoration of constitutional balance. This may be wishful thinking, but one often hears that Trump's pandemic failings approximate those of Hoover's during the Great Depression started in 1929, and

that the Democrats will be in a position to reintroduce order and greater unity as did Franklin Roosevelt in 1933.